

**I.C. No. 17-008751, DORIS M. VAN SLAMBROUCK, Plaintiff, v. FORSYTH COUNTY,  
Defendant-Employer, and PMA COMPANIES, Defendant-Administrator**

\*\*\*\*\*  
**COMPROMISE SETTLEMENT AGRE**  
 \*\*\*\*\*

On January 15, 2017, Plaintiff, who was then age 67 with a date of birth of [REDACTED], was employed as an animal shelter attendant by Defendant-Employer and had been so employed for approximately two months. The parties agree that Plaintiff's average weekly wage on January 15, 2017 was \$350.40, resulting in a compensation rate of \$233.60. On that date, a dog's head hit Plaintiff's left hand resulting in a fracture to the left fifth finger.

[illegible]

The parties expressly understand and agree that the foregoing paragraphs concerning Plaintiff's medical treatment are intended only as a summary of the course of that treatment. The examinations, evaluations, and treatment received by Plaintiff are more fully set forth in the medical and rehabilitation reports submitted to the North Carolina Industrial Commission along with this agreement as Exhibit A. Plaintiff and Defendants hereby certify that such exhibit contains all medical and rehabilitation reports relative to Plaintiff's January 15, 2017 accident of which they now have knowledge and possession. The contents of those reports are incorporated herein by reference as if fully set forth. The parties hereto further certify that Exhibit A constitutes a full and complete copy of all relevant and material medical, vocational, and rehabilitation reports known to exist as required by N.C.G.S. § 97-82 and 04 NCAC 10A .0502. Plaintiff acknowledges that Defendants have agreed to the terms of this settlement and will make the payments called for herein reasonably relying upon that certification. The parties to this agreement hereby waive further hearings before the North Carolina Industrial Commission and, in presenting this agreement for approval, represent that they have made available to the Commission with said agreement all relevant and material medical, vocational, and rehabilitation reports known to exist. In this connection, the parties hereby stipulate and agree to waive any rights they may have to contest the approval of this agreement based upon any failure to provide copies

of medical, vocational, or rehabilitation records to the Industrial Commission with this agreement for approval.

Plaintiff has not returned to a job or position at the same or greater average weekly wage as was being earned prior to the January 15, 2017 accident. The parties dispute whether Plaintiff's work condition is related to her work-related incident.

By affixing her signature hereto, Plaintiff, by and through counsel, certifies to Defendants and to the North Carolina Industrial Commission that she makes no further claim for total or partial wage loss as a result of her January 15, 2017 accident.

Plaintiff contends that she sustained a compensable accident arising out of and in the course of her employment or a compensable occupational disease, and is entitled to substantial benefits under the North Carolina Workers' Compensation Act.

Defendants contend that Plaintiff has reached maximum medical improvement and is able to return to work, that she is not entitled to all of the benefits now being claimed.

The parties hereto have conferred together, Plaintiff being represented by Oxner + Permar, PLLC, Attorneys of Greensboro, North Carolina, and Defendants being represented by Goldberg Segalla, L.L.P., Attorneys of Raleigh, North Carolina, and have decided that it is in the best interests of all concerned to enter into an agreement whereby all matters and things in controversy arising out of the January 15, 2017 accident would be settled with the payment to Plaintiff of FIVE THOUSAND SEVEN HUNDRED FIFTY AND 00/100 DOLLARS (\$5,750.00), in one lump sum, without commutation, in settlement of all claims whatsoever under the North Carolina Workers'

20885672.v1

Compensation Act arising prior to the date of this agreement, whether asserted or unasserted. This sum represents the settlement of a disputed matter and not an admission of liability, and is in lieu of any disability or other workers' compensation benefits, including but not limited to those which might otherwise have been claimed for a change in condition or progression of any condition which might develop in the future; medical, death or any other benefits, which are or may be due Plaintiff, her dependents, her estate or any other representative of Plaintiff now or at any time in the future pursuant to the North Carolina Workers' Compensation Act. The parties and their respective counsel also stipulate and agree that this settlement is fair and just, that the interests of all parties and of any person or entity, including a health benefit plan, that paid any of the medical expenses of Plaintiff have been considered, and that there is a need for finality in this litigation.

Anticipating an attorney's fee of less than 25%, the balance of FOUR THOUSAND THREE HUNDRED TWELVE DOLLARS AND 50/100 (\$4,312.50) as the balance of future compensation in payments pro-rated over Plaintiff's life expectancy of 14.8 years, based on Plaintiff's date of birth of [REDACTED], according to the Mortality Tables Codified in N.C. Gen. Stat. §8-46. Plaintiff's life expectancy of 14.8 years equals 769.6 weeks and yields payments of \$5.60 per week.

All of the known medical expenses incurred by Plaintiff for the January 15, 2017 accident have been paid by Defendants through the date of denial, May 23, 2018. Pursuant to the terms of N.C.G.S. § 97-17(b), no attachment documenting these expenses is necessary. Plaintiff certifies that she has not had any unauthorized or

20883672.v1



disputed medical treatment related to this accident. The parties and their respective counsel stipulate and agree that the positions of all parties to this agreement are reasonable as to the payment of medical expenses.

The parties have considered Medicare's interests with regard to the settlement of the medical portion of this claim, as required under the Medicare Secondary Payer Act, 42 U.S.C. § 1395y(b)(2), *et seq.*, and the current MSP regulations, codified at 42 C.F.R. § 411.20, *et seq.*

The parties have considered whether Medicare has made any payment, conditioned upon possible reimbursement, for medical services allegedly related to the January 25, 2017 accident, for which Defendant-Administrator may be deemed responsible by Medicare as a primary payer. Plaintiff represents and stipulates that Medicare has not paid any medical bills whatsoever, whether associated with the January 25, 2017 accident or otherwise, because Plaintiff is not a Medicare beneficiary and is not Medicare eligible. Accordingly, the parties rely upon Plaintiff's representation that Medicare has not made any payment for medical care on behalf of Plaintiff and there is no possible Medicare conditional payment issue. Plaintiff agrees to hold Defendants harmless for any loss of Medicare benefits or for any recovery the Centers for Medicare and Medicaid Services (CMS) and/or the Benefits Coordination & Recovery Center (BCRC) may pursue based upon any incorrect or inaccurate information provided by Plaintiff. Plaintiff further agrees that based upon the parties' consideration of Medicare's reimbursement rights in the negotiated terms of this settlement, there is no valid right to a private cause of action for damages because

20885672.v1

Defendants have not failed to provide for primary payment and/or appropriate reimbursement.

The parties have further agreed to resolve the portion of Plaintiff's claim involving future medical treatment. It is not the intention of the parties to this agreement that responsibility for future medical treatment related to the January 25, 2017 accident will be shifted from Defendants to Medicare or the federal government. The parties understand that in certain circumstances, a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) may be necessary to protect the interests of Medicare and/or Plaintiff as a current or future Medicare beneficiary in conjunction with the full and final settlement of a workers' compensation claim. The parties have considered and evaluated whether a WCMSA should be established in this case. Considerable attention has been given by all parties to Plaintiff's potential for future entitlement to such benefits and reasonable consideration of Medicare's interest.

The parties further understand that the submission of a settlement to CMS is never mandatory and that the current workload review thresholds, as set forth in CMS Memorandum dated May 11, 2011, includes only settlements in which (I) a claimant is currently a Medicare beneficiary and the total settlement amount is greater than \$25,000.00 ("Class I"); or (II) the claimant has a "reasonable expectation" of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than \$250,000.00 ("Class II"). According to the CMS memorandum dated April 22, 2003, a reasonable expectation of

20885672.v1

Medicare enrollment includes (a) the individual has applied for Social Security Disability Benefits; (b) the individual has been denied Social Security Disability Benefits but anticipates appealing that decision; (c) the individual is in the process of appealing and/or re-filing for Social Security Disability Benefits; (d) the individual is 62 years and 6 months old (i.e., may be eligible for Medicare based upon age within 30 months); or (e) the individual has an End Stage Renal Disease (ESRD) condition but does not yet qualify for Medicare based upon ESRD.

Based upon the current CMS workload review thresholds, the parties understand that a WCMSA may not be submitted to CMS for review under "Class I" because the amount of settlement is not greater than \$25,000.00; or under "Class II" because the amount of settlement is less than \$250,000.00.

Based upon the material and relevant medical records, the parties do not anticipate any further medical care will be necessary or recommended for the January 25, 2017 accident. Furthermore, a WCMSA would not be reviewed by CMS, even if voluntarily submitted, because the settlement does not meet the current workload review thresholds. Therefore, based upon the existing criteria and suggested guidelines presently in effect, the parties believe that a WCMSA is not necessary or required to protect Medicare's interests and no portion of this settlement should be apportioned to fund a WCMSA.

Plaintiff certifies that any and all known liens or potential liens involving Medicare, Medicaid, the Internal Revenue Service, Child Support Enforcement, or other agencies of federal, state or local government have been revealed to Defendant, and Plaintiff

20885672.v1

agrees to hold harmless Defendant regarding any such liens. The parties acknowledge that Plaintiff's certification contained in this paragraph is a material representation relied upon by Defendant in entering into this agreement.

Plaintiff has agreed to settle her case for less than the full amount of reasonably anticipated future benefits for a variety of reasons. Settlement will provide for a known amount of recovery, thereby eliminating uncertainty as to the future, such as the possibility that Plaintiff will die in an accident or from an unrelated health problem. Further, Plaintiff will derive emotional benefit from the elimination of the workers' compensation system from her life and from the increased control she will have over her medical treatment and other aspects of her life.

Plaintiff represents to the North Carolina Industrial Commission that by execution of this agreement, she knowingly and intentionally waives her right to further benefits under the North Carolina Workers' Compensation Act, but it is agreed that no rights other than those arising under that Act are compromised or released by this Agreement.

The parties acknowledge that any opinions stated by physicians or other medical providers regarding the nature and extent of Plaintiff's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Plaintiff further acknowledges that her condition may be progressive and that recovery therefrom is uncertain and indefinite. Accordingly, Plaintiff and Defendants agree that they will not seek to set aside this settlement agreement in the future on the basis that any party, in entering into this agreement, relied on incorrect statements or opinions from physicians

20885672.v1

or other medical providers regarding the diagnosis or prognosis of any injury, whether now known or unknown, resulting from the January 15, 2017 accident.

Defendants agree to pay all costs incurred, with the exception of Plaintiff's share of the settlement submission fee, which is addressed in a separate agreement.

Defendants agree to pay the entire mediator's fee and agree to waive any credit for Plaintiff's share of that fee.

Plaintiff agrees that in making this Agreement, she was not influenced by any representations or statements regarding her condition, the nature of her injuries, or any other matters concerning her claim before the North Carolina Industrial Commission, made by any person, firm, corporation, physician, or surgeon acting for or on behalf of Defendants; that the facts in connection with her employment and with her resulting injuries and impaired physical condition, if any, are fully known, understood, and comprehended by Plaintiff, and that her rights under the Workers' Compensation Act are thoroughly and completely understood by her.

In consideration of the compensation payments recited, and Plaintiff has and does hereby release and forever discharge not only for herself but also for her heirs, next of kin, and/or personal representative(s), and Defendants respectively, of and from any and all and every manner of action and actions, cause or causes of action, suits, debts, dues and sums of money, judgments, demands, and claims whatsoever, which against Defendants, she ever had or may have by reason of or growing out of the terms and provisions of the North Carolina Workers' Compensation Act, on account of the

January 15, 2017 accident, which give rise to this claim for compensation and for any subsequent disability sustained by her, or medical bills incurred by her.

Plaintiff expressly agrees that any and all rights which she may have or which may arise as a result of any change of condition under and by virtue of the provisions of Chapter 97 of the North Carolina General Statutes, giving her the right to reopen this claim for compensation or medical benefits at any time within two years from the date of the last payment of compensation under an Award by the North Carolina Industrial Commission are waived, and Defendants respectively, are expressly and particularly released from any and all further liability to her by reason of any right or claim Plaintiff, Plaintiff's heirs, next of kin, and/or personal representative(s) may have, or which may hereafter arise, to reopen this action and claim further benefits, whether compensation, medical, or otherwise.

All parties to this agreement specifically stipulate that the North Carolina Industrial Commission may consider the matters now before it in passing on this compromise agreement, subject to the conditions herein stated. This agreement is made expressly subject to the approval of the North Carolina Industrial Commission by its award duly issued, and the same shall be binding upon all parties when approved by said Commission. All parties further agree that, in the event the North Carolina Industrial Commission does not approve this agreement, nothing contained herein shall be construed as an admission of liability in any future proceedings before the North Carolina Industrial Commission or any other tribunal.

20885672.v1

I.C. File No. 17-008751

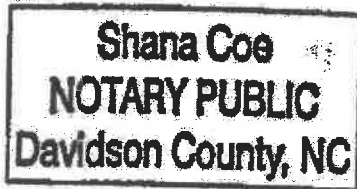
Page 13

It is further understood that the rights and remedies of Plaintiff against Defendants as a result of Plaintiff's employment and her January 15, 2017 accident are governed and controlled by the North Carolina Workers' Compensation Act, and that all of such rights are being compromised, adjusted and forever resolved.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

20885672.v1

By the signatures affixed below, Plaintiff and Defendants accept the terms of the settlement described herein.



Doris M. Van Slambrouck  
Doris M. Van Slambrouck, Plaintiff

Consented To:

Kathy Stewart  
Kathy Stewart  
Attorney for Plaintiff  
North Carolina State Bar No. 48400

NORTH CAROLINA  
Gulbert COUNTY

Personally appeared before me this 12 day of October, 2018, Doris M. Van Slambrouck, who, being first duly sworn, acknowledged the execution of the foregoing agreement for the purposes and considerations therein expressed.

My Commission expires:  
1/5/2022

[Signature]  
Notary Public

Forsyth County,  
Defendant-Employer

BY: [Signature]  
Gregory S. Horner  
North Carolina State Bar No. 35346

PMA Companies,  
Defendant-Administrator

BY: [Signature]  
Gregory S. Horner  
North Carolina State Bar No. 35346